

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
OFFICE OF THE STATE AUDITOR  
STATE OF MONTANA**

|                            |   |                              |
|----------------------------|---|------------------------------|
| IN THE MATTER OF:          | ) | Case No.: SEC-2009-46        |
|                            | ) |                              |
| LPL FINANCIAL CORPORATION, | ) |                              |
| a Broker-Dealer firm,      | ) | <b>CONSENT AGREEMENT AND</b> |
|                            | ) | <b>FINAL ORDER</b>           |
| Respondent.                | ) |                              |
| <hr/>                      |   |                              |

This Consent Agreement and Final Order (Agreement) is entered into by the Montana Securities Department (Department), acting pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101, *et seq.*, (Act) and LPL Financial Corporation (Respondent), with a principle place of business located at One Beacon Street, 22<sup>nd</sup> Floor, Boston, MA 02109-3106.

**RECITALS**

WHEREAS, on September 17, 2009, the Department initiated an Agency Action against Donald Chouinard (Chouinard), a broker/dealer salesperson and investment adviser for the Respondent from May 17, 2004, until May 12, 2009, for violations of the Act and the Montana Insurance Code;

WHEREAS, the Department investigated certain mutual fund activity, including mutual fund switching; trading in customer accounts without authorization; trading excessively in customer accounts; taking money from customer accounts for a day

trading program and failing to account for it; misrepresenting the values of customer investments; offering and selling an investment in Cradlepoint Technologies without providing proof of ownership; Chouinard taking customer money and depositing it into Chouinard's personal bank account; and conducting a Ponzi scheme.

WHEREAS, due to Chouinard's actions, some of Respondent's customers suffered monetary losses;

WHEREAS, the Department alleges that the Respondent violated Mont. Code Ann. § 30-10-201(13)(k) by failing to reasonably supervise Chouinard to ensure his compliance with the Act;

WHEREAS, the Department and the Respondent agree that the best interests of the public would be served by entering into the Agreement.

NOW THEREFORE, in consideration of the mutual undertakings contained in this Agreement, the Department and the Respondent hereby agree to settle this matter pursuant to the following terms and conditions:

#### **STIPULATIONS AND CONSENTS**

I. Without admitting or denying any of the Department's allegations, the Respondent stipulates and consents to the following:

A. Pay a total of \$1,144,416.51 in Restitution to the customers identified in **Exhibit A** attached hereto. The Restitution shall be distributed by the Respondent in accordance with the following terms and conditions:

1. By certified mail 10 days after the date of this Agreement, the Department shall provide a notice to each customer identified in **Exhibit A**, specifying the final allocated amount available to the customer.



2. An identified customer seeking to claim funds as provided in **Exhibit A** shall execute a release and assignment of claims on a form acceptable to the Department. The form of document entitled Acknowledgment of Funds, Release, and Assignment shall acknowledge (i) acceptance of funds, (ii) that such funds constitute a release of any claims by the customer with respect to securities transactions conducted by Chouinard through Respondent, and (iii) assign any claims the customer may have against third parties. No funds shall be distributed to any customer without receipt of an executed form. The customer shall return the executed form to the Department and within 5 days of receipt, the Department shall forward the original executed form to the Respondent.

3. All Restitution claims and all documents required for distribution executed by the customers, must be made within 15 days of receiving notice from the Department of their allocated amount.

4. Within 10 days of receipt of the original executed form, the Respondent shall distribute the amount identified in **Exhibit A** to the customer.

5. At the customer's election, the Respondent will either credit a customer's account held by Respondent with the allocated amount, or issue a check payable to the customer.

B. Pay a fine of \$150,000, which shall be paid within 10 days of the date of this Agreement.

C. The Respondent fully and forever releases and discharges the Commissioner, the Department, and all Department employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this Agreement.

D. This Agreement is entered without adjudication of any issue, law or fact. It is entered into solely for the purpose of resolving the Department's investigation and allegations, and is not intended to be used for any other purpose. For any person or entity not a party to this Agreement, this Agreement does not limit or create any private rights or remedies against the Respondent including, limit or create liability of Respondent, or limit or create defenses of Respondent, to any claims.

E. Upon execution of this Agreement, the Respondent acknowledges and waives its right to appeal the Commissioner's Order.

II. The Department and the Respondent to this Agreement agree and acknowledge:

A. This Agreement constitutes the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the Department or by any member, officer, agent or representative of the Department to induce Respondent to enter into this Agreement.

B. This Agreement may not be modified orally and any subsequent modifications to this Agreement must be mutually agreed upon in writing to be effective.

C. This Agreement shall be incorporated into and made a part of the attached Final Order issued by the Commissioner herein.

D. Upon execution of this Agreement, the Department will not commence an administrative action against the Respondent based upon the activities giving rise to the Department's investigation that occurred prior to the execution of this Agreement.

E. This Agreement shall be effective upon signing of the Final Order.

F. This Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.

DATED this 20<sup>th</sup> day of October, 2009. **SECURITIES DEPARTMENT**

By: 

JESSE LASLOVICH  
Attorney

DATED this 20<sup>th</sup> day of October, 2009 **LPL FINANCIAL CORPORATION**

By: 

Its:   
Managing Director



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this 26<sup>th</sup> day of OCTOBER, 2009, a true and correct copy of the foregoing Consent Agreement and Final Order was served upon the following by hand delivery or by depositing the same in the United States mail postage paid and addressed as follows:

**VIA USPS:**

LPL Financial Corporation  
Mr. James Vannah, Esq.  
Legal Department  
One Beacon Street, 22<sup>nd</sup> Floor  
Boston, MA 02109-3106

Bingham McCutchen LLP  
Ms. Christine Bruenn, Esq.  
85 Exchange Street, Suite 300  
Portland, ME 04101-5045

**VIA HAND DELIVERY:**

Jesse Laslovich, CSI Attorney

Susan Paulson-Davis

**FINAL ORDER**

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603 and §§ 30-10-101, MCA, *et seq.*, and upon review of the foregoing Consent Agreement and good cause appearing therefore,

IT IS HEREBY ORDERED that the foregoing Consent Agreement between the Securities Department and the Respondent, LPL Financial Corporation, is adopted as if set forth fully herein.

DATED this 26<sup>th</sup> day of OCTOBER, 2009.

MONICA J. LINDEEN  
Commissioner of Securities and Insurance  
Montana State Auditor

By:   
LYNNE EGAN  
Deputy Commissioner of Securities

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
OFFICE OF THE STATE AUDITOR  
STATE OF MONTANA**

IN THE MATTER OF:

LPL FINANCIAL CORPORATION,  
a Broker-Dealer firm,

Respondent.

) Case No.: SEC-2009-46  
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**CUSTOMER LIST AND  
IDENTIFIED LOSSES**

Pursuant to the Consent Agreement Final Order (Agreement) dated October \_\_\_\_, 2009, between the Montana Securities Department (Department) and the Respondent, the following is a list of each customer who, upon execution of a release and assignment of claims, is entitled to payment as follows:

R.C.: \$ 57,596.66

J.M.: \$ 918,180.90

T.M.: \$ 45,738.95

L.S.: \$ 122,900.00

